U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29833910

Date: FEB. 15, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an entrepreneur, city counselor, and philanthropist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for this classification by establishing his receipt of a major, internationally recognized award or meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(2). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." It also

sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is an entrepreneur who has also engaged in municipal politics and contributed to philanthropic projects. He states that he would like to "continue [his] life's work in the United States" and remain involved in entrepreneurial activities.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner did not meet any of the evidentiary criteria. On appeal, the Petitioner asserts that he meets the same six evidentiary criteria he previously claimed. After reviewing all of the evidence in the record, we conclude that he does not meet at least three of the evidentiary criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

In order to establish that they meet this criterion, a petitioner must show that they have received a prize or award, that their receipt of the prize or award was based upon excellence in their field of endeavor, and that the prize or award is nationally or internationally recognized in the field of endeavor. Here, the Petitioner submitted evidence that he was named as an honorary citizen of two Brazilian cities. But the Director determined that neither of these awards were nationally or internationally recognized, and appeared to conclude that they were not granted for excellence in the Petitioner's field of endeavor.

On appeal, the Petitioner asserts that the award from [redacted] was granted due to his "brilliant service as a Councilman," and that he received the one from the city of [redacted] because he "transformed the funerary system of the state of Ceara" with the creation of his company. The evidence supports those assertions and shows that the titles were awarded for excellence in the fields of civil service and entrepreneurialism, respectively.

As to the scope of the recognition of these awards, the Petitioner asserts, as he did in responding to the Director's request for evidence (RFE), that "being awarded Citizen of any city, municipality or country is an internationally recognized award." He asserts that many local governments in Brazil award these titles, and he previously submitted evidence about some of them. But the Petitioner misconstrues the language of the criterion, which refers to the recognition of the specific prizes or awards that he has received. The fact that many local, regional, and national governments name honorary citizens has no bearing on whether the awards he received are nationally or internationally recognized. The evidence shows that both were awarded by city councils, and the record does not establish that either was recognized beyond those city councils, let alone at the national or international level. Accordingly, the Petitioner has not established that he meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions, but that those contributions have been of major significance in their field of endeavor. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

The Petitioner bases his claim to this criterion on his service as a member of the [redacted] city council, and in particular his draft of a resolution which led to the creation of the Commission for Tourism, Industry, Commerce and Services for the city. He asserts that due to his role in the creation of this commission, [redacted] experienced growth in its tourism industry in the following years.

The evidence establishes the Petitioner's role as the author of the resolution creating this commission. The record also includes a report from the City Hall of [redacted] which states that the tourism industry in the city grew from 4% of gross domestic product (GDP) in 1995 to 9.8% in 2005, the year the committee was created, and rose to 11.1% in 2013. It also notes that "jobs generated in hotel and food" increased from almost 118,000 in 1996 to an estimated 140,000 in 2013. However, the sections of the report that were submitted (cover, title page, and pages 13 and 14) do not attribute this growth in the tourism industry to the actions of the commission, or even mention the commission. In addition, while the Petitioner claims that he was elected as the president of this commission, he did not submit evidence in support of this assertion. He has therefore not established that he made an original business-related contribution in the field of civil service.

In addition, even if his creation of the commission can be considered as an original contribution, the evidence does not show that it was of major significance. The Petitioner initially claimed that tourism accounts for 70% for [redacted] GDP, thus showing "the magnitude of such a contribution." But he does not provide evidence to support this statistic, which would be a far larger portion of GDP than was reported just 10 years earlier in the report mentioned above. More importantly, even if the record did show his leadership of the commission and the commission's impact on tourism in [redacted], which as stated above it does not, the Petitioner has not established that this would constitute a contribution of major significance in his field. The report shows only modest growth in the impact of tourism in the city in the years after the creation of the commission. Further, the Petitioner has not established that even his claimed growth in tourism would constitute a contribution of major

significance in the field of public service, which is far broader than the issue of tourism in a single large city.

The Petitioner also submitted evidence of his authorship of a number of additional proposed bills in the [redacted] city council, some of which were subsequently approved. But he does not claim that any of those other bills made a significant impact in his field, or submit evidence to show any impact.

For all of the reasons given above, we conclude that the Petitioner does not meet this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi)

This criterion requires that a petitioner establish that they have authored articles which have been published, that those articles are scholarly in nature, and that the media in which they were published were professional or major trade publications or other major media. A scholarly article in a non-academic field is one written for learned persons in that field, meaning that they have "profound knowledge gained by study." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

In her decision, the Director determined that a book authored by the Petitioner, [redacted] was not scholarly in nature and did not constitute a professional or major trade publication or other major medium. She noted that it was written for new and current entrepreneurs, and that those new to the field would not have profound knowledge of it. Further, the Director concluded that the book's availability in online bookstores was not sufficient to establish that it was a professional or major trade publication or other major medium.

On appeal, the Petitioner asserts that since he is an experienced and successful entrepreneur and is thus a learned person in that field, the book he wrote must be considered to be scholarly, and that the Director misconstrued the USCIS Policy Manual. However, it is the Petitioner that misunderstands that guidance and the meaning of the language of this criterion. While a scholarly article in a non-academic field will most likely be written by an expert in that field, as with the academic fields, it is those for whom the book is written that determines whether it can be considered to be scholarly. The Petitioner does not dispute the Director's characterization of the book as not for learned entrepreneurs, and the translated table of contents does not alter that perception.

In addition, the letters written by those who state that they were influenced by the Petitioner's book confirm its intended audience. For example, [redacted] writes in his letter that the book "is a manual not only for those who want to be entrepreneurs, but for a very successful life, regardless of the career one seeks to pursue." And in another letter, [redacted] writes that "many of the points presented by the book instigated me to seek not only to be an entrepreneur…" Based on this evidence, we agree with the Director that [redacted] is not a scholarly article or publication, and thus that the Petitioner does not meet this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

To meet this criterion, a petitioner must establish that they have performed in a role that is either leading or critical, and that the role was performed for an organization or establishment having a distinguished reputation. Here, the Petitioner bases his claim under this criterion on his role with the [redacted].[1] The Petitioner described his position as Counselor to the President of the church, in which he acted as a facilitator for self-reliance group for entrepreneurs. The Director noted that the evidence appeared to list the title of his position as Coordination Council Welfare Specialist, and that a letter verified that the Petitioner volunteered and was involved in advising new entrepreneurs, and concluded that this evidence was insufficient to show that the role was leading or critical.

In his appeal brief, the Petitioner reiterates that he "was invited to be Counselor to the Presidency" of [redacted] but does not refer to evidence to support this assertion. Regarding his role as a leader of the self-reliance group, he states that his role was critical because he "is a renowned entrepreneur and helped others..." He also refers to the letter from [redacted], Welfare and Self-Sufficiency Service Manager – [redacted], which [redacted] describes as "a non-profit institution linked to the [redacted]" [redacted] verifies the Petitioner's volunteer work, and states that the participation of the Petitioner and other local businessmen was important because one of the purposes of his organization "is the development and implementation of new ventures." But the letter does not indicate that the Petitioner played a leading role for the organization, and does not provide sufficient information to show that his role was critical. Evidence of a critical role should establish that a petitioner has contributed in a way that is of significant importance to the outcome of the organization's or establishment's activities, or those of a division or department. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual. Here, the letter does not include sufficient detail to establish that the Petitioner's role for Self-Sufficiency Service was critical for the outcome of the organization's activities, especially considering entrepreneurialism was only one of its purposes, and the Petitioner led only one of these groups. We note that the organization's "2020 Area Plan," submitted along with the Petitioner's response to the Director's RFE, states the following:

> Self-reliance groups combine practical skills with spiritual principles to help people help themselves. Self-reliance groups are usually small, less than 12 people, and are led by a facilitator, not an expert or teacher. Each self-reliance group focuses on one of four topics: employment, education, small business, or personal finance.

In addition, another section of the plan, in answering the question of whether facilitators need to be experts, further diminishes the claimed criticality of the Petitioner's role:

[1] We note that the Petitioner also initially claimed to have served in a leading role as leader of the opposition in the city council of [redacted] Brazil. However, he did not submit additional information regarding this role or organization in responding to the Director's RFE, and does not repeat this claim on appeal. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

> No. Self-reliance groups are designed to be facilitated and not taught by a teacher. The materials provide the experience, and the Spirit and power of the group make up for any difference. Simply follow the material and seek the Spirit. Facilitators will receive training.

Further, given [redacted] description of Self-Sufficiency Service as an organization linked to [redacted] this evidence does not support the Petitioner's claim to have played a critical role for [redacted] as an organization. As such, we agree with the Director's conclusion that the Petitioner has not established that he played a leading or critical role for [redacted] and add that he also has not shown that he served in a qualifying role for Self-Sufficiency Service.

While the Petitioner does not meet this criterion based upon his role, he has also not submitted evidence to establish that Self-Sufficiency Service has a distinguished reputation, whether it is a department or division of [redacted] or a separate organization. For both of these reasons, we conclude that he does not meet this criterion.

B. Comparable Evidence

A petitioner may submit comparable evidence to establish eligibility as an individual of extraordinary ability if the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to their occupation. 8 C.F.R. § 204.5(h)(4). To do so, they must establish that the regulatory criteria are not readily applicable to their occupation, and, if not, that the evidence provided is truly comparable to the type of evidence contemplated under the criteria. An unsupported assertion that the listed evidentiary criterion does not readily apply to a petitioner's occupation is not probative. *See generally* 6 *USCIS Policy Manual* F.2(B)(1).

The Petitioner initially made claims under this provision, referring generally to evidence of his education and reference letters regarding his philanthropic activities. The Director stated in their RFE that the Petitioner had not demonstrated that the criteria did not apply to his occupation, and in response the Petitioner provided additional evidence regarding a variety of issues. However, his explanation that "there are some achievements in the field that proves his eligibility that do not meet the standards described in the regulations" flips this requirement on its head, focusing on the evidence first and not how the criteria do not apply to his occupation. He went on to describe how this evidence establishes his standing in his field and national or international acclaim, but these issues are considered in a final merits determination if a petitioner successfully shows that they meet the initial evidence requirement for this classification.

The Director concluded that the Petitioner had not met the requirements for the consideration of comparable evidence, and the Petitioner does not challenge this aspect of the Director's decision on appeal. As previously noted , an issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). We will therefore not further consider his previous assertions regarding comparable evidence.

III. CONCLUSION

The Petitioner has not established that he meets at least three of the evidentiary criteria, and therefore has not met the initial evidence requirement for classification as an individual of extraordinary ability. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding published material about him under 8 C.F.R. § 204.5(h)(3)(iii) and a high salary or other significantly high remuneration at 8 C.F.R. § 204.5(3)(3)(viii). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-,* 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

While we need not provide the type of final merits determination referenced in *Kazarian,* 596 F.3d at 1119-20, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

ORDER: The appeal is dismissed.